

HC 895

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CLERK, SUPREME COURT
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IN THE SUPREME COURT OF FLORIDA

TIMOTHY BOUTWELL,
Petitioner,
vs.
STATE OF FLORIDA,
Respondent.

Case No. *81613*

PETITIONER'S BRIEF ON JURISDICTION

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PRELIMINARY STATEMENT

Petitioner was the defendant in the Criminal Division of the Circuit Court of the Nineteenth Judicial Circuit, In and For Indian River County, Florida and the appellant in the Fourth District Court of Appeal. Respondent was the prosecution and the appellee below.

In the brief, the parties will be referred to as they appear before this Honorable Court.

STATEMENT OF THE CASE AND FACTS

Petitioner was charged by information with four counts of driving while license suspended with serious injuries, in violation of § 322.34(3), Florida Statutes (1991). (He was also charged with driving under the influence of alcohol but those charges are not relevant to the issue on which review is being sought.) "The facts are that he drove his automobile while intoxicated into another vehicle and seriously injured the four occupants thereof." Slip opinion at 2. Petitioner pled no contest. He was adjudicated guilty and sentenced to consecutive prison terms for the driving under the influence charges and a combination of consecutive terms of imprisonment and probation for the four counts alleging violations of section 322.34(3).

Petitioner appealed to the district court. In its opinion issued March 24, 1993, the court partially reversed Petitioner's driving while intoxicated convictions, on grounds not related to the issue presented here, but rejected Petitioner's double jeopardy argument and affirmed petitioner's four convictions for driving with license suspended. In so doing the court recognized conflict with a decision of the third district in Wright v. State, 592 So. 2d 1123 (Fla. 3d DCA 1991), quashed on other grounds, 600 So. 2d 457 (Fla. 1992). Slip opinion at 4.

Neither party sought rehearing. Petitioner filed his notice of intent to invoke this Court's jurisdiction on April 8, 1993.

SUMMARY OF ARGUMENT

The decision of the district court sub judice expressly conflicts with the third district's decision in Wright v. State on the question of whether a defendant may be convicted of multiple violations of Florida Statute 322.34(3) when he was involved in a single driving episode resulting in a single collision.

ARGUMENT

PETITIONER HAS PROPERLY INVOKED THIS COURT'S JURISDICTION SINCE THE OPINION IN BOUTWELL V. STATE, 18 FLA. L. WEEKLY D796 (FLA. 4TH DCA MARCH 24, 1993), CONFLICTS WITH THE OPINION IN WRIGHT V. STATE, 592 SO. 2d 1123 (FLA. 3D DCA 1991), QUASHED ON OTHER GROUNDS 600 SO. 2D 457 (FLA. 1992).

To properly invoke the conflict jurisdiction of this Court, Petitioner must demonstrate an express and direct conflict between the decision challenged and that of another district court on the same rule of law. Art. V, § 3(b)(3), Fla. Const., Jenkins v. State, 385 So. 2d 1356 (Fla. 1980).

The opinion of the fourth district sub judice decided the question of whether a defendant can be convicted of multiple charges under Florida Statute 322.34(3) arising from a single accident.¹ The court held multiple convictions are allowed under the statute and by the double jeopardy clause. The opinion recognizes however that the opposite conclusion was reached by the third district in Wright v. State.² Slip opinion at 5. Thus the issue of the allowable unit of prosecution for violations of section 322.34(3) has been expressly decided differently by two courts of appeal.

This Court should exercise its discretion by accepting jurisdiction of this issue, one which will certainly repeat itself and should be uniformly treated throughout the state.

¹ Petitioner was charged with and sentenced for four counts of driving with a suspended license causing serious bodily injury. The injuries resulted from a single collision.

² In Wright the defendant, driving a stolen truck, collided with a bus injuring four passengers.

CONCLUSION

Petitioner requests this Court to accept jurisdiction to review the merits of this case.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy hereof has been furnished by courier to Edward Giles, Assistant Attorney General, 1655 Palm Beach Lakes Boulevard, Suite 300, West Palm Beach, Florida 33401-2299 this 14 day of April, 1993.

Cherry Grant

CHERRY GRANT
Assistant Public Defender